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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	05-CR-00060 (S-11) (NGG)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	
VINCENT BASCIANO,	:	Monday, May 16, 2011
	:	10:00 a.m.
	:	
Defendant.	:	
	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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A P P E A R A N C E S: (Continued)

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Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Proceedings

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1 (In open court.)

2 (The following occurs outside the presence of the
3 jury.)

4 (Judge NICHOLAS G. GARAUFIS enters the courtroom at
5 2:44 p.m.)

6 THE COURTROOM DEPUTY: All rise.

7 THE COURT: All right. Please, be seated.

8 (Pause in the proceedings.)

9

10 (Defendant enters the courtroom.)

11 THE COURT: All right. Case on trial.

12 Appearances please.

13 MS. MERKL: Good afternoon, Your Honor.

14 Taryn Merkl Nicole Argentieri, Jack Dennehy, and
15 Stephen Frank for United States.

16 THE COURT: Good afternoon.

17 MR. GOLTZER: George Goltzer, Richard Jasper, Ying
18 Stafford and Lucy Kim for Mr. Basciano, who is present.

19 Good afternoon.

20 THE COURT: Good afternoon.

21 All right. The Court has received a note from the
22 jury, dated 5/16/11:

23 "Your Honor, we have reached a verdict."

24 Signed by the foreperson, Number One.

25 (Court's Exhibit 29 was received in evidence.)

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1 THE COURT: We're going to get the alternates, who
2 are in the different room, so they can be here for the
3 verdict.

4 (Pause in the proceedings.)
5

6 MR. GOLTZER: If the jury reaches a verdict of
7 guilty on Count 2, we would request they be polled.

8 THE COURT: I always poll the jury.

9 And if that were the case, I will have the jury
10 retire to the jury room while we discuss further scheduling.
11 Otherwise, it won't be necessary to have them come back.

12 (Pause in the proceedings.)
13

14 (In open court.)

15 THE COURTROOM DEPUTY: All Rise.

16 (Jury enters at 2:48 p.m.)

17 (The following occurs in the presence of the jury.)

18 THE COURT: Will the foreperson remain standing.

19 Everyone else may be seated.

20 (Complies.)

21 THE COURT: Madame Foreperson, has the jury reached
22 a verdict?

23 THE FOREPERSON: Yes, Your Honor.

24 THE COURT: All right. Please, give the verdict
25 sheet to the clerk.

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1 (Hanging.)

2 THE COURT: All right. You may publish the verdict.

3 (Hanging.)

4 THE COURTROOM DEPUTY: As to Count One, conspiracy
5 to murder Randolph Pizzolo in aid of racketeering:

6 On the charge of conspiracy to murder Randolph
7 Pizzolo in aid of racketeering in Count One, how do you find
8 the defendant, Vincent Basciano; guilty or not guilty?

9 THE FOREPERSON: Guilty.

10 THE COURTROOM DEPUTY: As to Count Two, murder of
11 Randolph Pizzolo in aid of racketeering:

12 In the charge of murder in aid of racketeering in
13 Count Two, how do you find the defendant, Vincent Basciano;
14 guilty or not guilty?

15 THE FOREPERSON: Guilty.

16 THE COURTROOM DEPUTY: As to Count Three, using,
17 carrying or possessing a firearm:

18 On the charge of using, carrying or possessing a
19 firearm in Count Three, how do you find the defendant, Vincent
20 Basciano; guilty or not guilty?

21 THE FOREPERSON: Guilty.

22 THE COURTROOM DEPUTY: Was the firearm at issue in
23 Count Three discharged; proven or not proven?

24 THE FOREPERSON: Proven.

25 THE COURT: All right.

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1 Please, take the verdict sheet and poll the jury,
2 please.

3 THE COURTROOM DEPUTY: All right, Ladies and
4 Gentlemen of the Jury.

5 (Handing.)

6 THE COURT: You may be seated, ma'am.

7 THE COURTROOM DEPUTY: Having heard the verdict
8 given by your Foreperson;

9 Juror Number One is that your verdict?

10 JUROR NUMBER ONE: Yes.

11 THE COURTROOM CLERK: Juror Number Two, is that your
12 verdict?

13 JUROR NUMBER TWO: Yes.

14 THE COURTROOM CLERK: Juror Number Three, is that
15 your verdict?

16 JUROR NUMBER THREE: Yes.

17 THE COURTROOM CLERK: Juror Number Four, is that
18 your verdict?

19 JUROR NUMBER FOUR: Yes.

20 THE COURTROOM CLERK: Juror Number Five, is that
21 your verdict?

22 JUROR NUMBER FIVE: Yes.

23 THE COURTROOM CLERK: Juror Number Six, is that your
24 verdict?

25 JUROR NUMBER SIX: Yes.

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1 THE COURTROOM CLERK: Juror Number Seven, is that
2 your verdict?

3 JUROR NUMBER SEVEN: Yes.

4 THE COURTROOM CLERK: Juror Number Eight, is that
5 your verdict?

6 JUROR NUMBER EIGHT: Yes.

7 THE COURTROOM CLERK: Juror Number Nine, is that
8 your verdict?

9 JUROR NUMBER NINE: Yes.

10 THE COURTROOM CLERK: Juror Number Ten, is that your
11 verdict?

12 JUROR NUMBER TEN: Yes.

13 THE COURTROOM CLERK: Juror Number Eleven, is that
14 your verdict?

15 JUROR NUMBER ELEVEN: Yes.

16 THE COURTROOM CLERK: Juror Number Twelve, is that
17 your verdict?

18 JUROR NUMBER TWELVE: Yes.

19 THE COURTROOM DEPUTY: Jury polled, Your Honor.

20 THE COURT: Very well, thank you.

21 Members of the Jury;

22 As you're well aware, by virtue of the fact that the
23 jury has reached a verdict of guilty on Count Two, which is
24 the murder of Randolph Pizzolo in aid of racketeering, it will
25 be necessary to have a penalty phase for this trial.

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1 It will be necessary for me to talk to the attorneys
2 as to the schedule for that penalty phase; therefore, I'm
3 going to have you retire to the jury room and remain there,
4 and I'll bring you back out when I know what the schedule will
5 be so that you can plan your time.

6 So, at this time, the jury may retire to the jury
7 room and I'll call you out as soon as we're ready.

8 All rise for the jury.

9 (Jury exits at 2:52 p.m.)

10

11 (In open court.)

12 (The following occurs outside the presence of the
13 jury.)

14 THE COURT: Please, be seated.

15 (Pause in the proceedings.)

16

17 THE COURT: All right.

18 The next step is to -- would you like a few minutes
19 to talk to each other about the penalty phase?

20 MS. MERKL: That might be helpful, Your Honor.

21 THE COURT: Mr. Goltzer?

22 MR. GOLTZER: Yes, sir.

23 THE COURT: All right. Why don't we take ten
24 minutes so the parties can confer.

25 Let me just say this: It's important that we begin

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1 the penalty phase at the earliest possible time. The jury was
2 told that we expected that the case would last until the end
3 of May. So, if we have to go beyond that, I'd like to avoid
4 losing any jurors who may have plans. So, we need to plan
5 this out very efficiently. All right?

6 So, I'll give you until, let's say until 3:15.

7 ALL: Very good, Your Honor.

8 THE COURT: Thank you.

9 (Recess taken at 2:54 p.m.)

10

11 (In open court.)

12 (Judge NICHOLAS G. GARAUFIS enters the courtroom at
13 3:35 p.m.)

14 THE COURTROOM DEPUTY: All rise.

15 THE COURT: Be seated.

16 (Pause in the proceedings.)

17

18 (Defendant enters the courtroom.)

19 THE COURT: All right. Ms. Merkl, Mr. Goltzer, I
20 know you've had a discussion.

21 Do you have a proposed schedule for submissions?

22 MS. MERKL: For the submissions, Your Honor, I
23 believe that the parties are prepared to submit whatever open
24 responsive briefing we owe to the Court, or new motions, that
25 pertain to aggravating factors or mitigating factors tomorrow,

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1 with a response due by the opposing side by Thursday.

2 So, hopefully we can resolve the bulk of the legal
3 matters.

4 THE COURT: Thursday at noon.

5 MS. MERKL: By the end of the week, yes.

6 THE COURT: Thursday at noon.

7 And Friday, at 10:00 o'clock in the morning, we'll
8 have oral argument on the submissions.

9 We've distributed the draft of the opening charge to
10 the jury for the penalty phase. Please, be prepared to
11 discuss that as well on Friday. And it's my expectation that
12 we'll begin the penalty phase at 10:00 o'clock on Monday
13 morning.

14 Mr. Dennehy.

15 MR. DENNEHY: Yes, Your Honor.

16 THE COURT: Since you're the lead on the penalty
17 phase for the Government, what is the Government's estimation
18 of the number of days that will be needed to complete the
19 Government's case on the penalty phase, give or take?

20 MR. DENNEHY: Give or take, Judge, we were just
21 discussing whether this jury would sit next Friday.

22 THE COURT: Next Friday?

23 MR. DENNEHY: Correct.

24 THE COURT: No. They have plans for the day
25 before --

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1 MR. DENNEHY: I understand.

2 THE COURT: -- Memorial Day and then, they have
3 plans for the half-day after, the Tuesday after Memorial Day.
4 So, we'll resume in the afternoon of the 31st.

5 MR. DENNEHY: So, if we sat next week, Monday
6 through Thursday.

7 THE COURT: Through Thursday.

8 MR. DENNEHY: The Government would get through, I
9 would imagine, at least three-quarters of our case.

10 THE COURT: All right.

11 And then the balance would be on Tuesday and
12 Wednesday the following week?

13 MR. DENNEHY: I'm not sure. Is next weekend
14 Memorial Day or the one after that?

15 THE COURT: No. This coming weekend is the weekend
16 before Memorial Day. We're going to start on Monday, before
17 Memorial Day, with testimony. Monday through Thursday, that's
18 four days.

19 The Friday just before Memorial Day starts is a day
20 off --

21 MR. DENNEHY: Right.

22 THE COURT: -- and half of Tuesday we're not going
23 to have a trial.

24 So, I would call it a four-and-a-half day weekend,
25 all right?

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1 MR. DENNEHY: So, let's say, Your Honor,
2 conservatively, the Government will take the next two calendar
3 weeks, given that it's a half-schedule.

4 MS. MERKL: No.

5 (Pause in the proceedings.)
6

7 MR. DENNEHY: Thursday of next week?

8 MS. MERKL: Yes.

9 MR. DENNEHY: I said, we'll probably get 75 percent
10 of our case in by next Thursday. And if I'm wrong, you'll
11 thank me.

12 THE COURT: I'm not going to thank you. I'm going
13 to tell you, you should be wrong. You need to move along on
14 this.

15 And it also depends, I know, of decisions that the
16 Court will make about what you can put into evidence and what
17 you can't. But it's my hope that you will streamline your
18 case and make it as efficient as possible.

19 MR. DENNEHY: We will.

20 THE COURT: All right.

21 So, that means that you'll probably be done by next
22 Thursday.

23 MR. DENNEHY: Yes.

24 THE COURT: See that? That was very easy.

25 And the defense has a case on mitigation.

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1 Mr. Jasper.

2 MR. JASPER: Yes, Your Honor.

3 Our case, I think, should be able to be completed in
4 perhaps one day. Maybe one day-and-a-half.

5 THE COURT: Right.

6 MR. JASPER: But I think one day.

7 THE COURT: So, by the middle of the following week,
8 the case, the penalty phase will go to the jury is my
9 expectation.

10 MR. JASPER: I believe that's accurate.

11 MR. DENNEHY: There may be a rebuttal case.

12 If the defense case about ADX has any traction, so
13 to speak, the Government may rebut. But we'll see.

14 THE COURT: Well, we'll see.

15 MR. JASPER: So, Your Honor, then the Government's
16 case could finish by next Wednesday or Thursday?

17 THE COURT: You don't mean "next." You mean the
18 Wednesday or Thursday after Memorial Day?

19 MR. JASPER: No. I actually was thinking...

20 THE COURT: I'm trying to avoid having the
21 Government's case go into the following week, if at all
22 possible. But they still have the right to present their
23 case.

24 So, if they go into Tuesday after Memorial Day or
25 into part of Wednesday, then you would have your case

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1 Wednesday and Thursday. And I would charge the jury, assuming
2 there's no rebuttal case.

3 And as you know, at the penalty phase, it's not
4 necessary for the jury to be unanimous, so.

5 MR. FRANK: Your Honor, is the jury sitting the
6 Friday after Memorial Day?

7 THE COURT: I would expect, if necessary. I'm sure
8 that I could convince the jury to sit that day if they felt
9 that it would hasten their release from jury duty.

10 So, I will bring that to their attention at the
11 appropriate time. I don't think this is the point at which to
12 do it because we really don't have a good sense of how long
13 the Government's case is going to take.

14 But toward the end of next week, we'll have a better
15 idea, I think; don't you?

16 MR. DENNEHY: Yes, yes, Your Honor.

17 THE COURT: All right.

18 (Pause in the proceedings.)
19

20 THE COURT: Now, you understand that two of the
21 issues have to do with -- well.

22 One of them has to do with the proposal that members
23 of the Santoro family testify, all right? And another has to
24 do with issues involving Mr. Vitale's status as a cooperator
25 and his sentence.

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1 So, you're going to address that in your papers?

2 MR. DENNEHY: The Government will certainly address
3 the issue of the Santoro family.

4 And I don't know if the defense intends to move, in
5 the first instance, regarding Cicale.

6 THE COURT: You mean Vitale.

7 MR. DENNEHY: Vitale, I'm sorry.

8 THE COURT: Well, if the defense raises it, then you
9 will respond to it.

10 MR. DENNEHY: Right.

11 THE COURT: And we'll resolve it.

12 MR. DENNEHY: Right.

13 THE COURT: All right.

14 Is there anything else we need to do this afternoon?

15 MR. DENNEHY: No. Just tell the jurors.

16 THE COURT: No, no, I know that.

17 But do "we," before they come back, need to do
18 anything else this afternoon?

19 MR. DENNEHY: Not from the Government.

20 MR. JASPER: Yes, Your Honor.

21 THE COURT: Mr. Jasper.

22 MR. JASPER: Mr. Basciano would like an ex parte
23 proceeding with the Court and defense counsel.

24 THE COURT: Okay.

25 THE DEFENDANT: Thank you.

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1 THE COURT: That's fine. We'll do it when we're
2 done with everything else.

3 But that's it, I take it, Mr. Jasper?

4 MR. JASPER: That's it.

5 THE COURT: All right.

6 Let's bring back the jury.

7 THE COURTROOM DEPUTY: And the alternates.

8 THE COURT: Yes, and the alternates.

9 (Pause in the proceedings.)

10

11 (In open court.)

12 (Jury enters the courtroom at 3:47 p.m.)

13 THE COURTROOM DEPUTY: All rise.

14 THE COURT: Please, be seated.

15 Members of the Jury;

16 We have gone over the schedule for the balance of
17 proceedings in this case. It will be necessary for the
18 parties and the Court to resolve certain issues prior to the
19 beginning of the penalty phase and we're going to do it as
20 efficiently as possible this week.

21 We will begin the penalty phase Monday morning at
22 9:30. It's my expectation that it should be completed by
23 sometime during the following week. So, basically, Monday
24 through Thursday of the week before Memorial Day, we will have
25 trial. Friday, we will not have trial.

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1 Then, you have a three-day weekend. And then I also
2 understand that you need half of Tuesday off. So, we will not
3 have trial Tuesday, the 31st, after Memorial Day, in the
4 morning. We will just have trial in the afternoon. And we'll
5 get to the exact time and all next week.

6 And then, that week we expect that the testimony
7 will end sometime in the middle of the week or toward the end
8 of the week. I'll charge the jury and the jury will
9 deliberate on the penalty.

10 If the jury starts deliberating on Thursday, I'll
11 ask the jury to deliberate on Friday as well, but we don't
12 have to get there yet. I just want to anticipate what may
13 happen and that way you can make your plans accordingly. But
14 the Memorial Day weekend is intact, the way we had discussed
15 it.

16 So, as you know, all 18 of you will hear the
17 testimony. You can take notes, if you wish to do so. At the
18 end of the testimony, there will be closing arguments, just as
19 there were closing arguments for the guilt phase. There will
20 be opening statements, if the parties want to make opening
21 statements in the penalty phase, and I will try to be as
22 efficient as possible in making sure that your time is well
23 spent. So, that is my commitment to you.

24 So, you will now recess the trial until a week from
25 today, at 9:30 a.m., and we will begin the penalty phase at

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1 that time. You can talk to Mr. Reccoppa about any other
2 issues that you may have.

3 Thank you very much for your attention.

4 All rise for the jury.

5 (Jury exits at 3:50 p.m.)

6

7 (In open court.)

8 (The following occurs outside the presence of the
9 jury.)

10 THE COURT: All right. Please, be seated.

11 I'm going ask the Government to inform the
12 Probation Department that they should begin the process of
13 updating the defendant's Pre-Sentence Investigation Report so
14 that at the end of next phase, I can, after the report is
15 completed and the defense has the opportunity to review it and
16 make any objections to it, that we can promptly have a
17 sentencing, one way or the other, of the defendant.

18 So, would you please inform the
19 Probation Department.

20 MS. MERKL: I'll call them this afternoon,
21 Your Honor.

22 THE COURT: All right. Thank you.

23 Is there anything else from the Government for
24 today?

25 MS. MERKL: No. Thank you, Your Honor.

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1 THE COURT: Anything else from you, Mr. Goltzer,
2 while we're still all together here?

3 MR. GOLTZER: No, thank you.

4 THE COURT: All right. Thank you everyone.
5 We'll have an ex parte as soon as everyone leaves
6 the room.

7 (Pause in the proceedings.)

8
9 (Time Noted: 3:54 p.m.)

10
11 (WHEREUPON, the proceedings were adjourned to
12 May 20th, 2010.)

13
14 * * *

15
16 CERTIFICATE OF REPORTER

17 I certify that the foregoing is a correct transcript of
18 the record of proceedings in the above-entitled matter.

19
20 _____
21 Victoria A. Torres Butler, CRR
22 Official Court Reporter
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SEALED PROCEEDINGS - DEFENSE COUNSEL ONLY

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SEALED PROCEEDINGS - DEFENSE COUNSEL ONLY

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Victoria A. Torres Butler, CRR
Official Court Reporter

SEALED PROCEEDINGS - DEFENSE COUNSEL ONLY

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(END SEALED PORTION.)

20

(WHEREUPON, the proceedings were adjourned.)

21

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CERTIFICATE OF REPORTER

23

I certify that the foregoing is a correct transcript of
the record of proceedings in the above-entitled matter.

24

25

Victoria A. Torres Butler, CRR
Official Court Reporter

Victoria A. Torres Butler, CRR
Official Court Reporter